LABOUR DEPARTMENT

The 17th January, 1968

No. 456-3Lab-68/1.75.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer Labour Court Rohtak, in respect of the dispute between the workmen and management of M/s Sakow Industries (P) Ltd., Plot No. 36, Behind Capital Flour Mills, 20 Miles, Inside Mathura Road, Faridabad :

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 115 of 1967

Between

The workmen and the management of M/s Sakow Industeies (P) Ltd., Plot No. 36, behind Capital Flour Mill, 20/Miles, inside Mathura Road, Faridabad.

Present :—

Shri Nanak Chand Kalra, claimant in person.

Shri Rajinder Pal, Manager of the respondent concern.

AWARD

The Presipent of India in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947 has refe red the following indust ial d spute to this Court for adjudication, — *vide* gazette Notification No. 558-SF-II-67/dated 29th November, 1967 :—

Whether the termina ion of services of Shri Nanak Chand Kalra was justified and in order?

If not to what relief is he entitled?

On receipt of the reference usual notices were issued and the parties appe red in response to the notice. The workman Shri Nanak Chand has made a statement that his dispute with the management has been amic bly settled and he did not press his claim for reinstatement nor did he claim any other relief. I make my award accord ngly. No order as to costs.

Dated the 10th January, 1968.

P. N. THUKRAL.

Pr si ing Officer,
Labour Court, Rohtak

No. 95, dated 12th January, 1968

This award is submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Dispute Act, 1947.

P. N. THUKRAL.

Presiding Officer,
Labour Court, Rohtak.

No. 457-3Lab-68/1377.—In pursuance of the provisions of section 17 of Industrial Disputes Act 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presi ing Officer, Labour Court, Rohtak, in respect of the disputes between the workmen and management of M/s Delhi Pulp Industries, Faridabad N.I.T.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 125 of 1967

Between

The workmen and the management of M/s Delhi Pulp Industries, Faridbad N.I.T.

Present :—

Shri R. L. Sharma, for the workman.

Nemo for management.

AWARD

In exersise of the powers conferred by clause (c) of sub-section (1) of section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947, the President of India has referred the following

dispute to this Court for adjudication, *vide* gazette notification No. ID/FD/6B, dated 16th December, 1967 :—

Whether the termination of services of Shri Ram Bali, Fitter was justified and in order?

If not, to what relief is he entitled?

On receipt of the references usual notices were issued to the parties. In response to which the workman has filed a statement of claim. Notice under registered cover was given to the management. The service has been effected but no body has appeared on behalf of the management. Exparte evidence of the workman Shri Ram Pali has been recorded. It is proved by the evidence of the workman that he was appointed as a fitter in the respondent concern in the year 1964 and that his services have been terminated without giving him any charge sheet nor any inquiry has been held against him. The workman states that the fingers of his left hand were injured as a result of an accident while working in the factory of the respondent and thereafter the management have not happy with his work. If that was so it was the duty of the management to have obtained the opinion of the Doctor as to whether the workman was incapable of performing the duty of fitter and if the work of the claimant was not found satisfactory then a charge sheet should have been given to him to show cause as to why his services be not terminated. The action of the management in terminating the services of the claimant without giving any reason cannot be said to be justified. I therefore, hold that it is established by the exparte evidence produced by the management that the termination of the service of the claimant was not justified and in order. He is, therefore, entitled to be reinstated with full back wages. No order as to costs.

Dated the 10th January, 1968.

Camp. Ballabgarh.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Rohtak.

No. 90, dated 12th January, 1968.

This award is submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Rohtak.

No. 483-3 Lab-68/1379.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Indian Metal Industries, Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 85 of 1967

between

The workmen and the management of M/s Indian Metal Industries, Faridabad.

Present : Shri Darshan Singh, for the workmen.
Shri R. C. Sharma, for the management.

AWARD

Shrimati Mata Devi and Sat Bhirai were in the service of M/s Indian Metal Industries, Faridabad. They were laid off and it is alleged that thereafter their services were terminated or at any rate they were not permitted to resume their duties. This gave rise to an industrial dispute and the Government of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947 referred the following dispute to this Court for adjudication.—vide Gazette notification No. 422-SF-III-Lab-67/ dated the 7th September, 1967 :—

Whether the action of the management in terminating the service of Shrimati Mata Devi and Sat Bhirai or alternatively not allowing them to resume their duties was justified and in order? If not, to what relief are they entitled?

On receipt of the reference usual notices were issued to the parties. The claimants filed their statement of claim and the management filed their written statement. The claimants in their statement of claim have submitted that their services were laid off illegally and thereafter the management voluntarily declared them medically unfit. It is submitted that the claimants have been attending the factory daily but they were not allowed to resume their duties and the management thus illegally terminated their services.

The management in their written statement have raised a preliminary objection that the claimants have attached the legality of lay off and no individual dispute can be raised against the propriety of the lay off. The validity of the reference is also attacked on the ground that the services of the claimants have not yet been terminated and the reference is, therefore premature and in the alternative the Government itself is not clear as what is the actual matter in dispute. It is submitted that in the demand notice the dispute is regarding the alleged illegal lay off but the Government has referred for adjudication a dispute against the alleged termination or in the alternative not allowing the claimants to resume their duties. The dispute as referred to this Court is also said to be vague. On merits it is pleaded that the claimants were laid off on 2nd June, 1967; they were required to attend the factory during the period of lay off but they did not do so. It is further pleaded that on 18th August, 1967 both the claimant were informed that they were not attending the factory. It was also made clear to them that they had reached the age of 60 years and had become infirm and not fit to work physically. They were, therefore, required to

get themselves medically examined from the Principal Medical Officer of B. K. Hospital, Faridabad, within 7 days' of the receipt of the letter and the management offered to pay them the fees of the Hospital and the medical expenses but the claimants did not comply with the directions conveyed to them in this behalf. It is alleged that the management was in the process of taking action for terminating the services of both the claimants on the ground that they had reached the age of superannuation and were unfit to work but in the mean time this reference was made. It is alleged that the management now wants to place the whole case before this Court and if it is proved that the claimants have become old, infirm and unfit then the management should be allowed to terminate their services.

Before framing the issues the statements of the parties were recorded. The claimants Shrimati Mata Devi and Sat Bhirai stated that they had no objection to submit themselves for medical examination in order to ascertain if they were medically fit to continue in service and Shri R. C. Sharma, the representative of the management made a statement that he would deposit the expenses for the medical examination of the claimants. It was, therefore, ordered that the management should deposit the expenses under the appropriate head and the claimants should appear before the Principal Medical Officer, B. K. Hospital, Faridabad, for their medical examination on the date and time fixed by the Doctor and the following issues were framed:—

(1) Whether no individual dispute could be raised in this case because in the notice of demand it is only mentioned that the claimants were laid off for the last 5 months and nothing has been paid to them ?
(2) Whether the reference is premuture ?
(3) Whether the dispute as referred to this Court is vague?
(4) Whether the Government has exceeded its executive limits when making this reference to this Court?
(5) Whether the reference is invalid because there are individual disputes only while the Government has referred them as dispute between the management and the workmen?
(6) Whether the action of the management in terminating the services of Shrimati Mata Devi and Sat Bhirai or alternatively not allowing them to resume their duties was justified? and
(7) If the above issues are found in favour of the claimants to what relief they are entitled ?

Issue No. 1.

It is true that the claimants in their statement of claim have challenged the legality of the lay-off and Section 2-A of the Industrial Disputes Act, 1947, an individual workman can raise an industrial dispute only when he contests the order of his employer discharging, dismissing and retrenching or otherwise terminating his services. The objection of the management that the legality of the lay-off cannot be challenged by a workman acting individually is therefore correct. It is also true that in the demand notice the workmen have not challenged the legality of the lay-off in so many words but in view of my decision that no individual dispute can be raised with regard to the legality of the lay-off, this point is not very material

Issue No. 2.

The objections of the management that the reference is pre muture is correct in so far as the court is required to adjudicate upon the propriety of the alleged action of the management in terminating the services of the claimants. Shri Om Parkash, time-keeper of the respondent concern has appeared in evidence along with the attendance register and has stated that both the claimants namely Shrimati Mata Devi and Sat Bhirai were laid off from 2nd June, 1967 to 31st July, 1967 and thereafter both of them absented themselves but their names are still borne on the muster rolls and they are being marked absent. No evidence has been led that the services of the claimants have in fact been terminated. However, the claimants have also complained that they have been going to the factory daily but they were not allowed to work. The Court has also been required to adjudicate upon this point also. As already pointed out the case of the management is that the claimants have not been attending to their work after the period of lay-off. This reference cannot be said to be premature so far as this dispute is concerned. So this issue is partly held in favour of the claimants.

Issue No. 3.

The reference cannot be said to be vague merely because the claimants have not stated in what way the management have not allowed them to resume their duties. The claimants have stated that they have been going to the factory every day but the management did not permit them to resume their duties. There is no vagueness in this allegation and I find this issue in favour of the claimants.

Issue No. 4.

The management have not informed the claimants that their services have been terminated but still according to the version of the claimants they were not allowed to resume work. The case of the claimants is that they are not aware if their services have been terminated and the Government has called upon this Court to adjudicate upon the real dispute between the parties, i.e., if their services have been terminated, whether the termnation of their services is justified and if the management is not permitting them to resume their work for any other reason whether such a refusal is justified. In my opinion, therefore, it cannot be said that the Government have exceeded their executive functions while making this reference to this Court.

Issue No. 5.

The claimants are not being permitted to resume their duties and under Section 2-A of the Industrial Disputes Act, 1947, they are competent to raise an industrial dispute in this regard. The reference cannot be said to be invalid merely because there is no collective dispute between the workmen as a body and the management. I find this issue also in favour of the claimants.

Issue No. 6.

I have already held that the management have not so far formally terminated the services of the claimants and, therefore, the question of deciding whether the termination of their services is justified does not arise. But as already observed the case of the clamants is that they have been attending the factory daily but they were not permitted to resume their duties. The case of the management is that the claimants have not attended the factory at all during and after the lay-off and both the parties have led evidence in support of their respective contentions. In my opinion the version of the claimants is correct in this regard. There appears to be no reason as to why the claimants should not

have reported for work or make a false statement in Court in this respect. The evidence of the time-keeper that the claimants did not report for duty does not appear to be correct and in my opinion it is proved that the claimants have been going to the factory daily for work but they were not given any work.

It would not be out of place to mention here that the management have also taken up the position that the claimants have become old, infirm and unfit for work and they called upon them to appear before the Principal Medical Officer, B. K. Hospital, Faridabad, and get a medical certificate of fitness. They were also called upon to collect the expenses required for their medical examination but they did not do so. This plea appears to be wholly wrong. The claimants made a statement in Court that they had no objection to get themselves medically examined in order to ascertain if they are fit to perform their duties. The management were, therefore, directed to deposit the expenses for the medical examination of the claimants and in spite of the specific orders of the Court in this regard the management have not cared to deposit the necessary expenses. Hence the management is to be blamed if medical examination of the claimants could not take place for want of expenses. It appears that the plea taken up by the management that the claimants have not resumed their work after the lay-off is just a pretext for not permitting them to continue in their service. The real reason appears to be that the management do not wish to retain them in their service because from their point of view the claimants have become old and infirm and instead of adopting a straight forward course of getting them medically examined in order to ascertain if they are fit to continue in service the management adopted the dubious method of treating them absent. The management appears to be in the wrong because they want the claimants to get themselves medically examined but they do not wish to pay the necessary medical expenses though there were specific orders of the Court to this effect. The question as to whether the claimants have reached the age of superannuation or whether they have on account of their old age become physically unfit to continue in service has not been referred to this Court for adjudication. The only question for consideration at present is whether the action of the management in not permitting the clamants to resume their duties is justified or not and on this point I have not the slighest hesitation in coming to the conclusion that it is proved by the evidence on the record that the claimants have been presenting themselves for work but the management did not give them any work without any justification. So I find this point in favour of the claimants. Hence the claimants are entitled to their full back wages and the management must also permit them to resume their duties. Since the claimants have not incurred any costs in these proceedings I make no order as to costs.

Dated, the 30th December, 1967.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 85, dated the 12th January, 1968.

This award is submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

The 19th January, 1968.

No. 507-3Lab-68/1673.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following Arbitration Award of Shri Ishwar Dass Pawar, Presiding Officer, Industrial Tribunal, Punjab, Chandigarh, in respect of the dispute between the workmen and the management of the Gurgaon Ex-Servicemen Transport Co-operative Society, Ltd., Gurgaon:—

BEFORE SHRI ISHWAR DAS PAWAR, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PUNJAB, CHANDIGARH.

Reference No. 133/A of 1966.

In the matter of Industrial Dispute between

The Workmen and the Management of the Gurgaon Ex-servicemen Transport Co-operative Society, Limited, Gurgaon.

Present :

Shri Satish Loomba, for the workmen.

Shri Rup Chand Sharma, for the management.

AWARD

Sarvshri Nawal Singh, Basant Ram and Hira Lal, who were driver, conductor and checker, respectively, of the Gurgaon Ex-servicemen Transport Co-operative Society, Ltd., Gurgaon, were charge-sheeted by their employer on different grounds and after separate enquiries had been held against them they were dismissed from service. They, therefore, served demand notices, dated 15th June, 1966, 15th June, 1966 and 11th July, 1966, challenging their dismissal and demanding reinstatement with full back wages. On 18th August, 1966, the parties, however, entered into an agreement to refer the dispute to the arbitration of the Presiding Officer of this Tribunal. Therefore, in exercise of the provisions of sub-section (3) of section 10-A of the Industrial Disputes Act, the President of India was pleased to publish the arbitration agreement arrived at between the parties,—*vide* notification No. 616-SF-III-Lab-I-66/26978, dated 13th September, 1966.

In response to the notices issued to the parties they appeared before the Tribunal through their representatives and filed statements of their respective cases.

The statement of claim filed by the workmen disclosed the following facts:—

Hira Lal was employed as a checker in the respondent Company and he remained in service for three years. He was charge-sheeted for absence from duty and an enquiry was held against him. The enquiry committee consisting of three members exonerated him of the charge but its findings were rejected by the management. Thereafter a re-examination of the case was done by one of the Directors of the Company, Shri Hukam Singh, and on the basis of the re-examination he was dismissed from service by an order of the management, dated 28th April, 1966. On an objection raised by the workmen the enquiry committee was reconstituted without Shri Hukam Singh, but later on the sole responsibility of the re-examination was entrusted to him. The order of dismissal is alleged to be illegal, unjustified and mala fide and, therefore, it is prayed that the workman be reinstated with full back wages.

Basant Ram was employed as conductor and remained in the service of the respondent for 6 to 7 years. He was charge-sheeted on 8th April, 1966, and an enquiry was held. The enquiry was improper as he was not allowed to produce any witness. It is alleged that the findings of the enquiry committee are perverse and not substantiated by any material on the record. The workman was, however, dismissed from service by the management,—*vide* its letter dated 21st May, 1966. It is, therefore, prayed that the orders of dismissal be quashed and the workman reinstated with full back wages.

Nawal Singh, driver had been in the service of the respondent company for about nine years. He was charge-sheeted on 23rd February, 1966, and an enquiry was held against him. He was, however, not allowed to produce any witness in his defence. He was dismissed on 26th March, 1966. In this case also reinstatement with full back wages has been prayed.

The workmen subsequently filed a supplementary statement of claims in which it was stated that the afore-mentioned three workmen were dismissed by Shri Hukam Singh, a Director of the Company, who had no jurisdiction to do so, and for that reason their dismissal was void *ab initio*. It was added that these workmen were removed from service in order to create jobs for some of the relatives of Shri Hukam Singh and his father Shri Kundan Singh who was the Chairman of the Company.

In the written statement the management has raised a preliminary objection that the reference as made to the Arbitrator by the Punjab Government is improper and null and void on the grounds that the disputes being individual disputes could not be referred to the Arbitrator, that the Punjab Government failed to issue a notification as provided under sub-section (3-A) of section 10-A and, therefore, in the absence of any such notices the other workmen of the concern are not a party to the dispute and that the consent of the Arbitrator was not obtained, and lastly, that the agreement has not been signed by any of the office bearers of the union as required under the rules.

On the merits it has been pleaded that the three concerned workmen were duly charge-sheeted and on enquiries being held against them they were found guilty of the charges levelled and consequently dismissed from service. It has, therefore, been prayed that the demands of the workmen be rejected.

On the pleadings of the parties the following issues were framed:—

(1) Whether this reference is improper and null and void for the reasons given in preliminary objections in the written statement?

(2) Whether the reference has not been made by the appropriate Government and, therefore, it is bad in law?

(3) Whether the termination of services of Sarvshri Nawal Singh Basant Ram and Hira Lal is justified and in order? If not, to what relief they are entitled?

ISSUE No. 1.—

It may be observed at the very outset that the management is trying by raising these objections to wriggle out of the solemn commitment to refer the case to arbitration and this cannot be appreciated.

The first point made for the management is that the present dispute being an individual dispute could not be referred for arbitration. It may be noted that in view of the enactment of section 2A of the Industrial Disputes Act, an individual dispute is also an industrial dispute if it arises out of discharge, dismissal, retrenchment or termination of services of a workman. If it is an industrial dispute section 10A will apply with all its force and, therefore, it can by agreement of the parties be referred for arbitration. This point has, therefore, no force.

The second point urged is that the Punjab Government failed to issue a notification as provided under sub-section (3-A) of section 10-A and that in the absence of such a notice the other workmen were not a party to the dispute. A perusal of this provision of the law will make it clear that such a notification is not necessary in the case of individual disputes. The other workmen are, as a matter of fact, not concerned in the matter. The agreement will not, therefore, suffer from any defect on this score. This contention too has to be repelled.

The last point made is that the consent of the Arbitrator was not obtained and that the agreement had not been signed by any of the office bearers of the union as required under the rules. This contention too is devoid of any force. When the Arbitrator has entered upon his assignment, his consent is obviously there. The mere fact that the Arbitrator's consent was not obtained in advance would not vitiate the agreement. Under sub-section (2) of section 10-A, the arbitration agreement is to be signed by the parties thereto. In the present case the agreement is duly signed by the parties and it is not necessary that it should have been signed by the office bearers of the union as such disputes can be raised individually by the workmen concerned.

As there is no force in any of the preliminary points urged against the validity of the agreement, this issue is found against the management.

ISSUE No. 2.—

The reference was made to this Tribunal by the President of India as at the time there was President's rule in the State. The representative of the management has argued that the State being under the President's rule the reference should have been made by the Central Government. This is obviously a wrong view. When a State is under the President's rule the Government of the State does not cease to function. In such a case the normal parliamentary system of Government is replaced by the President taking over the administration of the State. Otherwise the entire Government machinery of the State continues to function as usual. The State does not become a part of the Central Government in that sense. The reference could not, therefore, be made by the Central Government and it was rightly made by the State Government. The representative of the management made another rather interesting point. According to him during President's rule all the laws and rules of the State cease to exist and only central laws and rules became operative. This argument is stated here only to be rejected because the point is too obvious to need any discussion.

In view of what has been stated above, this issue also is found against the management.

ISSUE No. 3.—

I will first take up the case of Shri Hira Lal. He was a checker in the respondent company for about three years before he was dismissed from service. He was charged for absence from duty and for neglecting his work and duties. The first enquiry committee appointed to go into the

charges levelled against him consisted of Sarvshri Amar Singh, Dev Raj and Prabh Dayal. It is common ground that this committee found the charges unproved and, therefore, made a report exonerating the concerned workman. This finding, however, did not find favour with the management and, therefore, they appointed another committee composed of Sarvshri Ram Singh, Hukam Singh, Basant Ram and Kushalpal Singh. The management disagreed with the findings of the first committee on the ground that the enquiry had not been conducted properly inasmuch as it was incomplete. The second enquiry committee found him guilty of the charges and recommended his dismissal from service. Acting on this report the management passed orders as proposed by the committee. Out of four members of the committee only two, namely, Sarvshri Ram Singh and Hukam Singh signed the report. It may be observed that Sarvshri Hukam Singh and Ram Singh are real brothers and were the Directors of the respondent company. Their father Shri Kundan Singh was Chairman of the company. The two members of the enquiry committee who signed the report was apparently not independent persons as they held very important offices in the company and hence deeply interested in it. Now let us see in what manner the proceedings of the first enquiry committee were incomplete.

The argument of the representative of the management that it was the further cross-examination of Hira Lal by the members of the committee that many new things came to light and that Hira Lal practically pleaded guilty is without any substance. The committee had no additional material whatsoever before it, not even a supplementary statement of the workmen himself and they made the report on the basis of the material already on the record. It was stated by Shri Hukam Singh who appeared as RW 2 that the previous record was incomplete as the relevant and necessary record had not been seen by the first enquiry committee. This statement finds support from the proceedings of a meeting of the respondent company, a copy whereof is on the file of the enquiry committee. They found him guilty simply on the record that had been prepared by the first committee. There was, therefore, no justification for the second enquiry committee to have recorded a finding different from that of the first enquiry committee on the same evidence. The contention of the representative of the workman that the management wanted somehow to dismiss this workman cannot be brushed aside lightly. Thus it would seem that no proper enquiry was held against Hira Lal and the members of the enquiry committee who signed the report were not free fom all bias against him. That being so the order of dismissal passed against him must be quashed and I give my findings accordingly.

Basant Ram was employed as conductor with the respondent company for 6 to 7 years before his services were terminated. He was charged with defrauding the society by not issuing tickets to 12 passengers. I have carefully gone through the evidence which forms the basis of his dismissal and find that there is no valid ground for interfering with the same. The enquiry committee against him comprised Sarvshri Ram Singh, Kirpa Ram and Amar Singh, but the report submitted by the committee was signed by the first two as Shri Amar Singh boycotted the proceedings with effect from 13th April, 1966. Basant Ram did not raise any objection to the constitution of the committee or the non-co-operation of Shri Amar Singh who was the representative of the workman. There is nothing on the record to support the argument of the representative of the workman that he was dismissed from service because he did not fall in line with the other members of the enquiry committee who enquired into the charges against Hira Lal. It was further argued for the workman that the vouchers which the workman wanted to be brought on the record were not produced by the management. There is nothing on the record to show that the workman seriously desired the production of the vouchers or that the management deliberately did not produce these documents. Moreover it is not clear in what way the vouchers could have helped the workman in the case. A perusal of the proceeding of the enquiry committee would indicate that the workman was given a proper opportunity to produce his evidence and whatever evidence he had was duly recorded. Therefore, the plea that he was not allowed to produce any witness is not correct. It was further urged that in addition to the charges made against Basant Ram his personal record was also taken into consideration. The findings of the enquiry committee do not make mention of any such previous record nor does the record say that the management took into consideration such a record while terminating his services. My attention was, however, drawn to the written statement filed by the management to show that previous record was also taken into consideration. A careful perusal of the written statement would make it clear that though a reference has been made in the written statement to the previous record, it does not say that it was taken into consideration for deciding the case. Another point made for the workman that he was dismissed by the management in order to create room for recruitment of their own men also finds no cogent support from the record. The mere fact that there had been rivalary between groups of the management would not necessarily lead us to the inference drawn by the workman.

For the reasons stated above I do not see any good reason to interfere with the impugned order as the enquiry was quite fair and proper.

This brings us to the case of Nawal Singh. It has been argued on behalf of the workman that no resolution appointing an enquiry committee to go into the charges made against him is forthcoming on the record. That may be so, but no objection was taken on this score at any earlier stage; even the statement of claim is silent on the point. Therefore, this objection loses all its force.

Another point made for the workman was that there was no evidence on the record to show that the water-body and the spring of the bus which has got damaged was due to his negligence. A reference to the record of the enquiry committee shows that on this point there is the evidence of Shri Harkha Singh, Secretary of the respondent company and Nawal Singh himself. The evidence on the point may be weak but that is no ground for the Tribunal to interfere with the impugned order as it is not a Court of Appeal. It has only to be seen that there is a *prima facie* evidence on the point and the task of appraisal as to its sufficiency or insufficiency must be left to the enquiry committee. The contention that previous service record of the workman was illegally taken into consideration for deciding the case has no force for the same reasons as recorded in the case of Basant Ram. The plea taken in the statement of claim that the workman was not allowed to produce any witnesses in his defence is equally without any merit. A glance at the proceedings of the enquiry committee would make it clear that he was given full opportunity

to produce his evidence and whatever evidence he led was duly recorded. Similarly the point that he was dismissed from service in order to create a vacancy for some relative of the members of the management cannot be accepted as correct. The fact that there were rival groups among the management would not show that the inference so drawn is legitimate.

In the case of Nawal Singh also I am of the view that quite a proper and impartial enquiry was held against him and there is no scope for interference.

This issue is decided as above.

In the result the order of dismissal passed against Hira Lal is quashed and the management is directed to reinstate him on his old job with full back wages and continuity of service. The claim of Basant Ram and Nawal Singh is, however, rejected.

There shall be no order as to costs.

(Sd.) . . . . . ,
The 23rd December, 1967. Presiding Officer,
Industrial Tribunal Punjab,
Chandigarh.

No. 2033, dated Chandigarh, the 30th December, 1967.

Award be submitted to the Secretary to Government, Punjab, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

(Sd.) . . . . . ,
Presiding Officer,
Industrial Tribunal Punjab,
Chandigarh.

The 17th January, 1968

No. 420-3Lab-68/1373.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Dewan Shah and Sons (P), Ltd., Jagadhri.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 47 of 1967

between

The workmen and the management of M/s Dewan Shah and Sons (P) Ltd., Jagadhri.

Present : Shri Madhu Sudan Sharan, for the workman.
Shri R. L. Gupta. for the management.

AWARD

Shri Bhagoti was employed as a casting man by M/s Dewan Shah and Sons (P) Ltd., Jagadhri. His services were terminated. This gave rise to an industrial dispute and the Government of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute to this Court for adjudication,—vide gazette notification No. 227-SF-III-Lab-67, dated 23rd June, 1967:—

Whether the termination of services of Bhagoti is justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which the claimant filed his statement of claim and the management filed their written statement. The claimant in his statement of claim alleged that he had served the respondent concern for 5 or 6 years as a casting man and his services were terminated with effect from 27th October, 1966,—vide letter No. DS/ESTT/2378/66, dated 27th October, 1966. It is alleged that though this letter is dated 27th October, 1966, but it was despatched on 28th October, 1966 after the receipt of the explanation for his absence from 22nd October, 1966 to 26th October, 1966. It is alleged that the termination of his services is illegal and unjust and it has been done in a revengeful spirit because the claimant used to arrange the meetings of the workers. It is alleged that the services of the claimant have been terminated without holding an inquiry. It is also alleged that the management,—vide their letter No. DS/Estt./2429/66, dated 19th December, 1966 terminated the services of the claimant again on 19th/20th December, 1966 with a view to make a show of compliance with legal formalities. It is, therefore, prayed that the claimant be reinstated with full back wages and continuity of service.

The management in their written statement raised a preliminary objection that the reference is directed against M/s Dewan Shah and Sons, Jagadhri, while there is no such firm and the reference is, therefore, invalid. On merits it is pleaded that the reference is an outcome of demand notice, dated 28th November, 1966 in which it is stated that the termination of the services on 27th October, 1966 is illegal and unjustified but in the order of reference the onus of proof has been shifted on the management which could not be legally done. As regards the termination of services of the claimant on 27th October, 1966, it is stated that the management,—vide their letter dated 18th November, 1966 addressed to the claimant cancelled the dismissal order under intimation to the Labour-cum-Conciliation Officer, Karnal after giving full consideration to the explanation submitted by the claimant and in order to give him full opportunity to defend himself but the claimant refused to accept this letter and it was received back undelivered through the postal authorities. It is alleged that a copy of this letter was again sent under registered cover to the claimant,—vide letter dated 18th November, 1966, with a copy pasted on the notice board and to the Labour Officer, Karnal, but this letter was also received back undelivered because the claimant was not available. It is alleged that the claimant never attended to his work during all this time nor did he even bother to appear before the Inquiry Officer. It is stated that the management in order to give fullest opportunity to the claimant again addressed him a letter dated 4th December, 1966. but the claimant again refused to accept this letter and therefore, the Inquiry Officer was constrained to hold ex parte proceedings as a result of which the claimant was found guilty and accordingly he was dismissed ,—vide letter dated 19th December, 1966, under intimation to the Labour-cum-Conciliation Officer, Karnal. It is submitted that in view of these facts there was nothing wrong in the dismissal of the claimant as he himself was responsible for not defending himself or to report for duty in spite of the cancellation of the original order of dismissal. It is also pleaded that the order of dismissal dated 27th October. 1966 was invalidated and therefore the entire claim as per statement of demand is rendered infructuous and no adjudication with regard to

the termination of the services of the claimant by order dated 19th December, 1966, can be made in these proceedings.

The pleadings of the parties gave rise to the following issues:—

(1) Whether the reference is not legal because it is directed against M/s Dewan Shah and Sons, Jagadhri and not M/s Dewan Shah and Sons (P) Ltd., Jagadhri ?
(2) Whether the order of reference is not valid because as ordered it puts the burden of proof on the respondents ?
(3) Whether the claimant was dismissed,—vide orders dated 27th October, 1966?
(4) Whether this order of dismissal was cancelled and if so, what is its affect?
(5) Whether notices dated 8th November, 1966, 18th November, 1966 and 4th December, 1966 were sent to the claimant and he intentionally refused to accept the same ?
(6) Whether as a result of further inquiry the claimant was found guilty of misconduct and dismissed,—vide letter dated 19th December, 1966 ?
(7) Whether the order of dismissal is justified and in order?
(8) Relief.

Issue No. 1 :

The reference is said to be illegal because the respondent is described as M/s. Dewan Shah and Sons., Jagadhri and not M/s Dewan Shah and Sons (P) Ltd., Jagadhri. This is only a typographical error and the order of reference cannot be said to be illegal simply because of this technical description of the respondent concern. The claimant was admittedly employed by the respondent concern and the notice of demand was also received by them. The respondent concern has appeared in response to the notices issued by the Court and in my opinion there is no bar to the adjudication of the real dispute between the parties. I find this issue in favour of the claimant.

Issue No. 2 :

The services of the claimant have been terminated by the management and it is for them to prove to the satisfaction of this Court that the termination of his services was justified and in order. The order of reference is properly worded. No authority has been cited in support of the proposition that the reference is rendered invalid merely because the burdon of proof has been put on the management. I find this issue also in favour of the claimant.

Issues No. 3 *and* 4 :

The claimant was admittedly dismissed from service originally, vide orders dated 27th October, 1966, but the management realising the mistake that the order of dismissal was not legal because no opportunity had been given to the claimant to defend himself withdrew their orders. The learned representative of the claimant has submitted that the management having dismissed the claimant from service, vide their letter dated 27th October, 1966 were not legally authorised to withdraw their letter and initiate inquiry proceedings. In my opinion this contention is not correct. Obviously the services of the claimant could not be terminated without giving him an opportunity to defend himself and if the management by mistake terminated his services without holding an inquiry there was no bar to reviewing their wrong orders. The learned representatives of the claimant has cited no authority in support of the proposition that the management is not legally authorised to review a wrong order on their own initiative. The claimant himself maintains that the order, dated 27th October, 1966 terminating his services was not legal. I, therefore, hold that although the claimant was originally dismissed from service on 27th October, 1966, but this order of dismissal was cancelled and the management was legally competent to do so and then held a managerial inquiry and passed proper orders after the completion of the inquiry. This Court is also competent to adjudicate upon the propriety of the orders passed by the management after holding the domestic inquiry.

Issues No. 5, 6 *and* 7 :

The domestic inquiry held against the claimant was ex parte because according to the management the claimant was informed twice by means of registered letters to appear before the Inquiry Officer to answer the charge as to why he was absent from duty but he did not accept the letters in question nor did he appear before the Inquiry Officer. The claimant in his evidence says that his services were terminated two or three days after Dussehra without holding an inquiry against him and that he was not given any opportunity to defend himself or to cross-examine the witnesses if any produced by the management. He says that he never refused any letter or intimation that an inquiry was to be held against him. The claimant even after his alleged dismissal on 27th October, 1966 continued to reside in the quarter attached with the factory which had been allotted to him by the management. He has produced Shri Raja Ram an employee of the respondent concern who is also residing in one of the factory quarter in support of his defence. Shri Raja Ram says that no Postman ever came to the factory quarters and the registered letters and money orders meant for the workers are delivered in the office of the factory. It is not possible to place any reliance on the evidence of the claimant or his witness that no postman ever came to the factory quarters to deliver the registered letters to the claimant. As already pointed out the management made two attempts to effect the service of the notice of the inquiry proceedings under registered cover but the letters were received back undelivered. Shri Babu Ram, Postman has appeared on behalf of the management. He says that the letter Ex. R/4/3 was entrusted to him for being delivered to the claimant and he approached him to receive this letter, but he refused to accept it and so he made an endorsement to this effect and returned it to the Post Office. Shri Babu Ram, further says that he was also entrusted with the letter Ext. R/7 for delivering it to the claimant and he made two attempts on 9th October, 1966 and 10th October, 1966 to deliver this letter to him but he was not available and he made a third attempt on 13th October, 1966 and found the claimant but he again refused to accept it and so he made a endorsement Ex. R/7/2. The witness has further stated that the claimant was personally known to him.

The learned representative of the claimant has submitted that no reliance should be placed on the evidence of this witness because he admits in answer to the Court questions that all the letters addressed to the workers are first delivered in the office of the factory and the two letters in question were also first entrusted to the postman who delivers the dak in the office,

It is submitted that since the letters in question were issued by the office itself, therefore, the office manipulated with the postal authorities and got false endorsements of refusal on the two registered letters in question. It is urged that after the wrongful termination of his services the claimant had to remain out most of the time and he was not even aware that the management was holding any managerial inquiry and has sent notices under registered cover to the claimant. It is submitted that the claimant was not guilty of any misconduct and the management by terminating his services had acted in a vindicative manner.

I have carefully considered the submissions of the learned representative of the claimant and in my opinion the action of the management in terminating the services of the claimant was justified and in order. The claimant was admittedly absent from duty without leave and in his reply Ex. R/3, he explained to the management that he had been falsely involved in a theft case by a co-worker and that he was in police custody till 26th October, 1966. It should not have been difficult for the claimant to have established from the police records that he was in fact involved in a theft case and he was assisting the police in the investigation of that case and therefore, had to remain in attendance in the Police Station, till 26th October, 1966. The claimant has in fact led no evidence to prove that his absence from duty from 22nd October, 1966 to 26th October, 1966, was justified. On the other hand the management have produced the original letter Ex. R/5/1 which was written by the management to the Station House Officer, Police Station, Yamuna Nagar, enquiring if the claimant Shri Bhagoti had in fact remained in Police Custody from 22nd October, 1966 to 26th October, 1966. This letter was received back by the management with an endorsement Ex. R 5/2 of the A.S.I., Police Station, Yamuna Nagar, which is to the effect that Shri Bhagoti was not detained by the Police during the period aforesaid. The management while holding the domestic inquiry sent two notices under registered cover to the claimant calling upon him to appear before the Inquiry Officer in answer the charge of having remained absent from duty without leave. It is not the case of the claimant that the letters were not correctly addressed. The claimant admittedly remained in occupation of the factory quarter although he was no longer in the service of the respondent and the registered notices were addressed to his residential quarter. There is absolutely no reason as to why the postman should have twice made false endorsement on the registered letters addressed to the claimant. Moreover under issue No. 7, it was open to the claimant to also lead evidence on merits if he so desired and the claimant could have proved that his absence from duty was not without proper cause and the order of the management in dismissing him from service was vindicative. We have already seen that the claimant has not led any evidence in support of his allegations. On the contrary the management have proved that the claimant was absent without leave and that in spite of two registered notices addressed to him he did not appear before the Inquiry Officer, and the excuse put forward by him in his explanation Ex. R/3 that he was in police custody from 22nd October, 1966 to 26th October, 1966 has not been proved to be correct by the endorsement of the Police Officer, Ex. R/5/2. Under these circumstances it must be held that the order of the management terminating the services of the claimant was justified and in order. I give my award accordingly but make no order as to costs.

Dated, the 29th December, 1967.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 65, dated the 9th January, 1968.

This award is submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

Secy's Sign ure.

The 19th January, 1968.

No. 527-3Lab-68/1672.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of M/s Steel Krafts, Panipat:—

BEFORE SHRI K. L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, CHANDIGARH

Reference No. 76 of 1967.

between

The workmen and the management of M/s Steel Kraft Panipat.

Present : Shri R. L. Gupta, for the management.

Shri Raghbir Singh, for the workmen.

AWARD

The Government of India set up a Wage Board for the Engineering Industries by means of their resolution published under notification No. WB-4(3)/64, dated 12th December, 1964. The said Wage Board is still functioning but it has made some interim recommendations which were duly published by the Government of India in the *Gazette of India*, Extraordinary, dated 23rd July, 1966. The Government of Haryana, thereafter constituted a tripartite committee by notification No. 1377-S-66/2367, dated 28th December, 1966, which consisted of the Labour Commissioner, Haryana, as representing the Government, Shri Mohanjit Singh, President, Faridabad Industries Association, as representing the industry and Shri G. C. Joshi, General Secretary, Indian National Trade Union Congress, Yamuna Nagar as representing the workmen. The said tripartite committee arrived at some decisions which are contained in Ext. AW 1/1. M/s Steel Krafts, Panipat, which are admittedly carrying on an engineeding industry did not implement either the Wage Board Recommendations for intermi relief or the decisions taken by the tripartite committee constituted by the Haryana Government. The workmen of the concern issued a demand notice calling upon the management to implement the Wage Board recommendations as modified by the decisions of the tripartite committee constituted by the Haryana Government but the management did not comply with the said demand. The conciliation proceedings having presumably failed the Government of Haryana referred the dispute to this tribunal under clause (d) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947.—vide its notification No. 313-SF-III-67, dated 25th August, 1967. The item of dispute as mentioned in the said notification is in the following terms:

"Whether the workmen should be granted interim relief in accordance with the recommendations of the State Tripartite Committee set up by the Haryana Government for Engineering Industry. If so, with what details and from which date."

On receipt of the reference in this tribunal, usual notices were issued to the parties and in response to the same the workmen filed their statement of claims and the management filed their written statement to the same. The management took up a preliminary objection in their written statement that the workmen were precluded from raising the demand in question because of a settlement which had been arrived at between the parties on 10th August, 1966 (a copy of which is Ex. R. 1). The pleadings of the parties gave rise to two issues only which were framed on 7th October, 1967 and which are as under:—

(1) Does the settlement dated 10th August, 1966, copy marked R-1 by the bar the present reference?

(2) Whether the workmen should be granted interim relief in accordance with recommendations of the State Tripartite Committee set up by the Haryana Government for Engineering Industry. If so, with what details and from which date ?

The parties were called upon to lead their evidence in respect of the said issues and after conclusion of the same their representatives also addressed their arguments to me. My findings on the said issues are as under:—

Issue No. 1. The workmen had earlier served three demand notices on the management which are Ex. A-1, A-2 and A-3. It is contended by the management that after the receipt of the said three demand notices the parties settled the entire dispute contained in the same and as a result of it a deed of settlement was executed between the parties, a copy of which is Ex. R-1. The management rely upon the last clause of this deed which reads as under:—

"In view of the above settlement the union undertake that the workers would not raise any dispute involving financial implications directly or indirectly during the currency of this agreement which has fixed as five years".

It is urged by the management that the workmen are precluded from raising the dispute in question during the currency of the said settlement and at any rate till 10th August, 1971. The workmen contend in reply that the aforesaid clause in the settlement does not really amount to any settlement but even if it does, the management must be deemed to have waived the benefit of this clause by becoming a party to the decisions contained in Ex. AW 1/1. It is urged that the aforesaid decisions were taken by the tripartite committee and that the management of all the Engineering Industries must be deemed to be bound by the said decisions. After giving my careful consideration to the matter I feel that there is a good deal of force in the aforesaid contentions of the workmen. Presumably the entire engineering industry was represented at the said committee by Shri Mohanjit Singh, President of Faridabad Industries Association, Faridabad. It is important to note that after the issue of the Haryana Government notification constituting the said tripartite committee and appointing Shri Mohanjit Singh, President as a member of it as representing the engineers industries of Haryana, the present managemnt did not in any way dispute that Shri Mohanjit Singh was not their representative. Admittedly they did not write to the Government in this connection and took no objection regarding this in any other form. The committee was constituted after the date of the settlement and the present management must be deemed to have remained sitting on the fence to accept the decisions of the committee if they suited them and to reject them if they did not do so. The decisions of the committee are contained in AW 1/1 and they were never disputed at any earlier stage than in the proceedings of the present reference. The last clause in Ex. R-1 can only be deemed to have been inserted for the benefit of the employers and there was nothing to debar them from waiving the benefits of the said clause. From their conduct it must be taken that they did waive the same by becoming a party to the proceedings held by the aforesaid tripartite committee. This issue is, therefore, decided against the management.

Issue No. 2.—The Central Wage Board for Engineering Industries made certain interim recommendations which were accepted by the Government by means of their resolution published in the Gazette of India Extraordinary, dated 23rd June, 1966 a copy of which is AW 1/2. The tripartite committee of Haryana Government accepted the said recommendations with certain modifications and the final shape which the interim relief was given by the said tripartite committee is contained in the summary of the decisions of the said committee copy of which is AW 1/1. In the present case the union of the workmen has made a claim only for those workmen whose wages are up to and inclusive of Rs. 105 per month. The total number of such workmen in this concern is 58 and a complete list of them is Annexure A to the statement of claims filed by the workmen. It has not been disputed by the managment that 58 workmen mentioned in the aforesaid annexure A are those whose monthly wages are Rs. 105 or less in each case. The tripartite committee has given them a relief of Rs. 9 per month subject to the limitation that no one gets as a result of this increment more than Rs. 111 per month. By means of a settlement Ex. R. 1. the management had agreed to give them an increment of Rs. 3 per year and this is to continue for five years from the date of the said settlement which is dated 10th August, 1966. The representative of the workmen made it clear before me during the course of his arguments that this increment of Rs. 3 per annum may always be taken into consideration by the management while granting interim relief and that the interim relief may amount only to the difference between the amount mentioned in AW 1/1 and the amount of increments which the workmen get under the settlement Ex. R. 1. As a result of that the interim relief will be reduced by Rs. 3 in the first year and by Rs. 6 in the second year and nothing of it will be left after the workmen have earned three increments under the settlement Ex. R. 1. The contention of the management is that the workmen should not be given any interim relief but I do not find any force in this contention. It is true that the recommendations of the wage board as such have perhaps no binding authority but it is not denied by any of the parties that they are of valuable persuasive authority. Ordinarily the management as also the workmen should respect the said recommendations. I am, however, firmly of the opinion that the decisions arrived at by the tripartite committee as contained in Ex. A. 1/1 stand on different footings. They are binding on the parties in as much as both the parties to

the present reference must be deemed to be parties to the said decisions. It is fully proved on the record that other concerns engaged in the Engineering Industry which are covered by the Wage Board Recommendations have already implemented the decisions of the aforesaid tripartite committee. Admittedly the said decision give much less interim relief to the workman than what was originally contained in the recommendations of the Central Wage Board in respect of the interim relief. In the circumstances I hold that the management is bound to pay to the workers as per decisions (contained in Ex. AW 1/1). They are accordingly directed to pay Rs. 9 per month to all the 58 employees mentioned in Annexure A to the statement of claims of the workmen but this will be subject to the limitation that no workmen will get as a result of this more than Rs. 111 per month. The annual increment granted by the management in pursuance of Ex. R. 1 will be adjusted in the aforesaid amount and the interim relief will be deemed to be reduced to the extent of the said annual increment. The amount aforesaid shall be payable by the management, with effect from 1st of August, 1966. The arrears of the aforesaid relief shall be paid to the workmen within two months from the date of publication of this award in the official gazette.

No order as to costs.

The 15th January, 1968.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 74, dated Chandigarh, the 16th January, 1968.

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required by Section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

R. I. N. AHOOJA,
Secretary to Government, Haryana,
Labour & Employment Departments.